IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7778 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

USHMANKHA BAVAMIYA MALEK

Versus

STATE OF GUJARAT THROUGH

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR UR BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 20/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Art.226 of the Constitution of India, challenged the legality and validity of an order of detention dt. 23.5.2000 Annexure : A passed by Respondent No. 2 which he has passed in exercise of

powers conferred upon him under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that petitioner detenu is a "dangerous person " within the meaning of Sec.2(c) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority placed reliance on One I.P.C. case lodged in Gaekwad Police Station of Ahmedabad City against the detenu on 2nd May, 2000, and that case is pending with the Investigating Officer for investigation. The detaining authority also placed reliance on statements of two un-named witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. As per the papers, the detaining authority verified the statements of said two witnesses on 22nd May, 2000 and he passed an order of detention on the very next day i.e. on 23rd May,2000 which is challenged in this writ petition.

3. Though Rule has been served upon each respondent,the respondents have not filed affidavit-in-reply in reply to the Writ Petition by controverting the grounds mentioned in Memo thereof.

4. Ms.K.U.Mishra, the learned advocate for the petitioner has argued that the detaining authority has placed reliance of statements on two un-named witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act but looking to the respective dates of statements, date of verification of said statements and date of passing an order of detention, said claim of privilege is not genuine, and therefore, it violates mandate given in Art.22(5) of the Constitution of India. Ms.Mishra has placed reliance on the case of KALIDAS CHANDUBHAI KAHAR Vs. STATE OF GUJARAT & OTHERS, reported in 1993(2) G.L.R. 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under Sec.9(2) of the Act. He is required to do such exercise for verifying the correctness and genuineness of the facts stated in said statements. He has also to verify as to whether that persons are fictitious or real one. When he verified the statements on 22nd May, 2000 and passed an order of detention on the next day i.e. on 23rd May, 2000, it can be said that he had no time to do such exercise, and therefore, the privilege claimed by him is not genuine. Looking to the

facts and circumstances of the present case, this present case falls within the four corners of the case cited by Ms.Mishra.

5. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dt. 23rd May, 2000 passed by Respondent No.2 which is at Annexure: A is quashed and set aside. The petitioner detenu is ordered to be released forth with, if he is not required to be detained further for any criminal case or proceedings. Rule is made absolute accordingly. Direct Service is permitted.

Date:20/10/2000. (H.H.MEHTA,J.)
ccshah